

Parliamentary Procedure in “Plain Language”

Editors’ Note:

Many lawyers know the challenges of running a meeting efficiently and effectively. Our areas of expertise and interest in public service may propel us to serve on nonprofit boards of directors. Some of us have a scope of practice that involves advising governmental entities, school districts, or labor unions. But few lawyers have or take the time to become well versed in the nuances of parliamentary procedure that can help them make the most of their time spent in public meetings.

Nine parliamentarians in the State of Washington¹ recently joined together to give parliamentary procedure a “plain language” makeover. They developed and published a guide to assist citizens who want to know the expectations for public meetings under parliamentary procedure and Robert’s Rules of Order. These parliamentarians, with Ann G. Macfarlane, PRP, serving as project coordinator, graciously permitted the editors of this column to use excerpts from their guide and adapt them to fit Nebraska law, to produce the derivative work you see here. We are greatly appreciative of the team’s generous contributions of time and effort to this project. You can find their original guide at: <https://jurassicparliament.com/citizens-guide/>

The original guide is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>. This article is similarly licensed and may not be used for any commercial gain.

The Nebraska Open Meetings Act² generally governs the conduct of meetings of public bodies.³ Public bodies are free to adopt bylaws or other rules and regulations to govern the conduct of their meetings, to the extent not inconsistent with the Act.⁴ There is no express requirement in state law to follow parliamentary principles, but parliamentary principles are generally recognized to be part of the common law.⁵

Robert’s Rules of Order, first published in 1876, is one widely-used authority that codifies the general understanding of parliamentary procedure. There are other authorities as well. For instance, the Nebraska Legislature utilizes *Mason’s Manual of Legislative Procedure*.⁶ The content below refers to the current *Robert’s Rules of Order Newly Revised, 11th edition*, published in 2011 (“RONR” or “Robert’s Rules”).

Be enlightened at your next public meeting, with these parliamentarian answers to questions that can arise in the public meeting context:

If a public body has adopted Robert’s Rules, can it suspend all of Robert’s Rules for a particular meeting?

No. RONR p. 263-265.

How can a certain rule be suspended?

If a member wishes to suspend a rule, for instance, to allow a member of the public to speak longer than the allotted time, he says, “I move to suspend the rules in order to allow the citizen to complete his remarks.” This motion needs a second and cannot be debated. It usually takes a two-thirds vote to pass. The specific rule being suspended is not mentioned, only the purpose. Some rules cannot be suspended. RONR pp. 260-267.



Editors:

P. BRIAN BARTELS, partner, Kutak Rock LLP, Omaha

BRANDY R. JOHNSON, attorney, Law Office of Vincent Valentino, Lincoln

If you are interested in submitting an article for the “Plain Language” column, please e-mail Amy Prenda at aprenda@nebar.com.

PLAIN LANGUAGE

What are the obligations of the presiding officer during a meeting?

The presiding officer has the following duties. RONR pp. 449-450.

Open meeting	To open the meeting at the appointed time by taking the chair (sitting in the seat reserved for the presiding officer), after finding that a quorum is present, and calling the meeting to order.
Announce next activity	To announce in proper sequence the next activity before the public body in accordance with the prescribed order of business.
Recognize members	To recognize members who are entitled to the floor (who have the exclusive right to be heard at that time).
State questions and put to vote	To state and put to vote all questions that legitimately come before the public body as motions or that otherwise arise in the course of proceedings, and to announce the result of each vote; or, if a motion that is not in order is made, to rule it out of order.
Refuse to recognize dilatory motions	To protect the public body from obviously dilatory (recurrent time-wasting or obstructive) motions by refusing to recognize them.
Enforce order and decorum	To enforce the rules relating to debate and those relating to order and decorum within the public body.
Expedite business	To expedite business in every way compatible with the rights of members and the rules or bylaws of the public body.
Decide all questions of order	To decide all questions of order subject to appeal—unless, when in doubt, the presiding officer prefers initially to submit such a question to the public body for decision.
Respond to inquiries	To respond to inquiries of members relating to parliamentary procedure or factual information bearing on the business of the public body.
Authenticate documents	To authenticate by his or her signature, when necessary, all acts, orders and proceedings of the public body.
Close meeting	To declare the meeting adjourned when the public body so votes or—where applicable—at the time prescribed in the agenda, or at any time in the event of a sudden emergency affecting the safety of those present.

Who decides who may speak in debate and in what order?

The presiding officer recognizes members (gives them permission to debate) in accord with the rules of parliamentary procedure. For example:

- The person who makes a motion has the right to debate first if he wishes to. RONR p. 379.
- No one may debate a second time until everyone who wishes to do so has spoken once. RONR pp. 379, 388-389.
- The presiding officer may not refuse to recognize members based on personal preference. RONR pp. 376-377.

May members interrupt each other or the presiding officer?

No. Interrupting is forbidden under RONR. An exception is that a member may interrupt to raise a “point of order” if a procedural rule is being broken that needs immediate attention. RONR pp. 383-385.

May the presiding officer interrupt a speaker?

No. RONR specifically states that the presiding officer may not interrupt a speaker except for a point of order, so long as the speaker does not violate any of the rules or bylaws of the public body. The presiding officer may not interrupt, even if he knows more about a given subject than the debater. RONR pp. 43-44.

May the members speak directly to each other?

It depends. In a large public body, members must address all remarks to the presiding officer. In a small public body (up to approximately 12 members), members may speak directly to each other. However, the rule that no one may debate a second time until everyone who wishes to do so has spoken once still applies. Allowing members to debate to each other often leads to one-on-one conversations that violate this rule. RONR p. 392; pp. 487-488.

What kinds of remarks are forbidden at meetings?

There are certain types of unacceptable remarks under RONR, which are considered to be not germane (irrelevant) to debate.

- Personal remarks (remarks about a person's individual qualities, rather than his views).
- Insulting language, personal attacks, profanity and vulgarity.
- Inflammatory remarks.
- Criticizing a past action of the group, unless the topic is under discussion by the group as a whole, or the member plans to introduce a motion to amend or rescind the action at the end of his speech.
- Remarks that are not germane (relevant) to the topic under discussion.

PLAIN LANGUAGE

Members may not make such remarks, but non-member public citizens in attendance at the meeting are not bound by these restrictions. RONR pp. 392-393.

Who decides whether a remark is forbidden under these rules?

The presiding officer issues a ruling about improper remarks, subject to appeal. A member may also object to an improper remark. RONR pp. 294-295.

How many votes does it take to pass a motion or resolution?

In most cases it takes a majority vote to pass a motion or resolution. RONR pp. 400-429.⁷

Who decides what the outcome of a vote is?

The presiding officer announces the result of a vote. He has a special obligation to verify it beyond reasonable doubt. RONR p. 48.

If the presiding officer announces the result of a vote, and it seems to a member that he made an error, what should the member do?

If the vote was taken by voice, the member should call out "division." The presiding officer must then retake the vote by raising hands, asking members to stand, or taking a roll call vote RONR p. 52.

What should a member do when someone breaks one of the rules?

A member can make a point of order. This is a motion that requires another member, or the presiding officer, to abide by the organization's rules or parliamentary rules. If an error isn't obvious, the member may have to briefly explain how the rules are being broken.

This motion is made by just one member and in most circumstances the motion must be made at the time of the rule violation. When this motion is made it immediately and temporarily stops business until the point is ruled on by the presiding officer, who will either agree with the member and enforce the rule, or may disagree with the member. Once the presiding officer rules that the point of order was well taken (correct) or not well taken (incorrect), the business that was interrupted then continues (unless the presiding officer's ruling is immediately appealed). RONR p. 247.

How does a member raise a point of order?

The member who sees a rule violation and wants the rule enforced should stand up, interrupt the presiding officer or a speaker if necessary, and without waiting to be recognized, call out, "Point of order!" or "I rise to a point of order." RONR p. 253.

Can a member raise a point of order about the presiding officer's actions?

Yes. Everyone in the meeting must follow the rules. If this

happens, the presiding officer issues a ruling on his own action. RONR pp. 248, 650.

Can a public citizen in attendance at the meeting raise a point of order?

No. Only a member can raise a point of order. RONR pp. 96, 247.

What should members do when they disagree with a ruling by the presiding officer?

A member can appeal the presiding officer's ruling, which then tells the presiding officer that the member is in disagreement with the presiding officer's interpretation and that he wants the public body to decide it for themselves. The appeal must be made immediately. If other business intervenes, then it is too late to appeal the presiding officer's decision or ruling.

When the motion is made, it immediately and temporarily stops the pending business until a decision is reached on the appeal. After a vote is taken on the appeal by the members of the public body, the business that was interrupted then continues. RONR pp. 255-56.

How is an appeal conducted?

A member stands and without waiting to be recognized says: "I disagree with the ruling by the presiding officer." The presiding officer should recognize an appeal, even if worded simply as, "I don't think that's right - I disagree with you." The formal wording is, "I appeal from the decision of the presiding officer [chair]." The presiding officer then processes the motion. RONR p. 259.

Can appeals be debated?

Appeals pertaining to language and decorum may not be debated. In general, other appeals can be debated. There is a special process for debating an appeal. RONR p. 257.

Are there rulings that cannot be appealed?

Yes. A point of order that was raised while an appeal is pending cannot be appealed, nor can a ruling by the presiding officer for which there cannot possibly be two reasonable opinions. RONR p. 256.

What should the members do if the presiding officer ignores an appeal?

This is a highly significant violation of parliamentary procedure which should never happen. The member may stand and take the vote himself. Education is critical so that all involved understand how this process works. The public body may need to consult a non-member attorney if legal action is needed. RONR p. 651.

May the presiding officer order a member of a public body to leave the meeting?

No. RONR pp. 644, 647.

PLAIN LANGUAGE

May the members order one of their own members to leave the meeting?

Yes. In situations where disruption or disorderly conduct by a member warrants it, the other members may direct that he leave the meeting. Usually warnings are given first. The removal can be ordered only for a single meeting, not for future meetings. It is best to have adopted policies in place that state when and how such an event might occur. RONR pp. 643-653.

What is the purpose of the public comment period at public meetings?

The purpose of the public comment period at public meetings is for the public to inform the public body about their views on matters before the public body. It is not intended for debate and discussion with the public. When back-and-forth exchanges occur, it can become a challenge to describe the public body's position correctly and accurately, and substantial confusion may result. RONR pp. 96-97.

Public bodies typically have other channels in place to answer questions, address concerns, and dialogue with the public—community forums, surveys, personal discussions, a form on the website to contact members or staff, etc.

May the public body place limits on the public comment period?

Yes. The public body may place reasonable limits on when public comment is taken, how long people may speak, and how long the public comment period will be; the public body may also require that the subject matter pertain to the public body's work.⁸ All such rules should be "viewpoint-neutral," that is, they should not favor one opinion over another.⁹

What should the presiding officer and members do if the public becomes rowdy and unruly during a meeting?

The presiding officer should explain firmly to the public that they have an obligation to allow the public body to do its business. In cases of severe disruption, consultation with the public body's attorney and/or law enforcement may be appropriate.¹⁰ Nebraska law strictly limits the ability of the public body to enter closed session, to circumstances where it is "clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting."¹¹

Can the presiding officer order a public citizen in attendance to leave the meeting?

State and Federal law and court cases pertaining to open meetings and free speech govern this question. The Nebraska Open Meetings Act does not specifically address this question, however, the rights of the public with respect to attending open meetings are generally outlined in Neb. Rev. Stat. § 84-1412.

Can the meeting be videotaped, televised, photographed, broadcast, or recorded?

Yes, under Nebraska law, any person in attendance at the meeting may utilize these methods, subject to the reasonable rules and regulations of the public body governing such activities.¹² 

Endnotes

¹ John Berg, PRP; Kevin R. Connelly, PRP, CP; Ann G. Macfarlane, PRP; K. Ann McCarney, PRP, CP-T, Paul McClintock, PRP, CP-T; Weldon L. Meritt, PRP, CPP; Beverly Przybylski, PRP; Mary L. Randolph, PRP, CPP-T; Matthew J. Schafer, PRP.

² Neb. Rev. Stat. § 84-1407 to § 84-1414.

³ According to Neb. Rev. Stat. § 84-1409 (1):

(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or adopted as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and (b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders.

⁴ Neb. Rev. Stat. § 84-1407 to § 84-1414.

⁵ *E.g. Houser v. School Dist. of South Sioux City, In Dakota County*, 189 Neb. 323, 202 N.W.2d 621 (1972) (applying parliamentary law derived from the common law in the absence of any contrary statutory provision); but see, *Glad Tidings Assembly of God v. Nebraska Dist. Council of the Assemblies of God, Inc.*, 273 Neb. 960, 734 N.W.2d 731 (2007) (noting that Nebraska law does not require a particular formal parliamentary procedure for a church congregation's vote to close its doors).

⁶ Mason's Manual may be utilized, "in the absence of a controlling rule to cover a specific situation and in the absence of controlling custom, usage, and/or precedent." See Rules of the Nebraska Unicameral Legislative, 2-1(b).

⁷ *Chase v. Board of Trustees of Nebraska State Colleges*, 194 Neb. 688, 235 N.W.2d 223 (1975) (interpreting statutory language concerning number of votes needed for a measure to pass).

⁸ Neb. Rev. Stat. § 84-1414.

⁹ As a generalization, viewpoint neutral rules, specifically those that do not give any appearance of singling out disfavored persons or groups, are more likely to survive constitutional challenges. See e.g. *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015) for a discussion of First Amendment principles applicable to government regulation of citizen speech.

¹⁰ *State v. Guy*, 196 Neb. 308, 242 N.W.2d 864 (1976) (rejecting First Amendment and vagueness challenges to a municipal ordinance that made it a misdemeanor to purposefully or knowingly disrupt a public meeting which was not held in violation of law).

¹¹ Neb. Rev. Stat. § 84-1410.

¹² Neb. Rev. Stat. § 84-1412.